

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 312 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE FINANCIAL SERVICES LTD.

Versus

A.T.V. PROJECTS (INDIA)LTD.

Appearance:

MR BR GUPTA for Petitioner

MR KM PARIKH for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/09/1999

ORAL JUDGEMENT

#. Heard Mr.Gupta, learned counsel appearing for the petitioner, Mr.Parikh, learned counsel for the respondent company and Mr.Mankad, learned APP for respondent No.5 State.

#. Rule. Mr.Parikh, learned counsel appearing for the respondent No.1 waives service of rule and Mr.Mankad, learned APP appearing for respondent No.5 waives service of rule. Mr. Gupta, learned counsel appearing for the applicant submits that the arguments advanced before the learned Metropolitan Magistrate are not properly appreciated and some of the contentions have not even

been referred and for that the applicant has made grievance in Para-3 of the memo of revision as well as in the grounds enumerated in Para-4. According to the complaint, it is the finance company which had advanced loan to the accused opponents. Accused No.1 is also limited company having its registered office at Bombay. Xerox copy of the complaint filed in the Court of learned Metropolitan Magistrate at Ahmedabad (Court No.9) is produced and for the purpose of dealing with this revision application. I would like to reproduce Para-2 of the said complaint, herein below;

"2. The accused had approached the complainant company seeking Lease Facility for their business. After preliminary discussions, the accused agreed to all the terms and conditions of the complainant company with a view to avail of the necessary funds for the aforesaid facility. As a consequences thereof, the complainant company issued to the accused Demand Draft Nos. 166875 to 166890 for Rs.9,00,000/- each and No : 166891 for Rs.2,32,500/- favouring the supplier of the machinery. Against the aforesaid consideration, the accused issued 60 post dated cheques of Rs.3,67,500/- each drawn on Central Bank of India, Nariman Point, Bombay to the complainant and simultaneously executed a Demand Promissory Note payable on demand. "

#. It is submitted that today the applicant company is having its branch office at Bombay but day on which the company advanced money to opponent No.1 company, the applicant company had no branch at Bombay so the negotiation as to loan advancement had taken place at Ahmedabad. The cheques for the amount of loan were issued and delivered at Ahmedabad and the cheques for which the complaint is filed were also given to the complainant by the applicant company at Ahmedabad. On the other hand, the say of opponent No.1 company is that the cheques were issued at Bombay. It seems that the learned Metropolitan Magistrate has accepted this sentence as a true statement without ascertaining other facts available on record including the statutory notice given to the opponent No.1 company and the above said set of facts narrated by the applicant company in the complaint. The facts narrated by the applicant complainant in the complaint are self explanatory and at the time of dealing with the issue of jurisdiction, averments made in the original complaint ought not to

have been ignored totally. It is settled legal position that, at more than one place, jurisdiction of the criminal court can be invoked if facts are such and there can be more than one court, where the complainant can rush with his grievance. Only embargo is that it must be one Court and not two or more simultaneously. The learned counsel appearing for the applicant strongly relies on the decision rendered by this Court on 21-1-98 in SHOW WALLANCE & CO. LTD VS. STATE OF GUJARAT AND ANOTHER (Coram : H.R.Shelat, J.) in Criminal Revision Application No : 452/97 wherein, this Court has analyzed the relevant legal position and has scanned the interpretation of Sections 177, 178 and 179 of Code of Criminal Procedure. Sections 138 and 142 of Negotiable Instrument Act are also referred in light of the procedural laws and it is apparent that looking to the facts and circumstances available on the record of the case on hand, two Courts had jurisdiction to try and entertain the case of the applicant company viz. the Court at Bombay and the Court at Ahmedabad. On careful reading of the order passed by the learned Metropolitan Magistrate, it is found that the learned Metropolitan Magistrate has nowhere observed that only Bombay Court has jurisdiction and no other Court than Bombay Court has jurisdiction over the matter. It is simply observed that cheque given by opponent No.1 company was of a bank having branch at Bombay but this fact would not adversely affect the right to prosecute Opponent No.1 company at Ahmedabad by the complainant, looking to the other set of facts.

#. Mr. Gupta has rightly submitted that in SHOW WALLANCE CO LTD (SUPRA), the learned Judge has divided the provisions of Section 179 of Code of Criminal Procedure in 7 sub heads for the sake of convenience. I would like to produce the relevant part of the order which runs as under;

"On dissection of the above stated provisions, it follows that the court in whose local limits the cause of action either wholly or partly arises will have the jurisdiction to hear and decide the case. Generally therefore that court will have jurisdiction within whose local limits the incident wholly occurs because occurrence of incident give rise to the cause of action. If series of the incidents constituting the offence occur at different places, in view of Section 178 of the Code of Courts within whose local limits one or more of the series of the incident constituting the offence occur, will also have

the jurisdiction because in that case each of the series of the incident will give rise to part of the cause of action. In view of such law, in the case on hand that court will have jurisdiction within whose local limits different series viz. :

- (a) the cheque is issued or despatched;
- (b) the cheque is received by the payee;
- (c) the place on which the cheque is drawn is situated;
- (d) the cheque is presented for encashment;
- (e) the cheque is dishonoured;
- (f) the intimation about dishonour of cheque is received by payee or holder of the cheque;
- (g) the payee or holder of the cheque resides or carries on his business constituting the offence occur. The Court within whose local limits the payee resides will have jurisdiction on the principle that the debtor has to find out the creditor which is made clear by the Punjab & Haryana High Court in the case of N.M. Malik vs. Prem Kumar Goyal 1991 Cr.L.J. 2594 to which I also agree."

#. Considering the overall aspects of the matter and the facts and circumstances of the case on hand, I am inclined to accept the submission made by Mr.Gupta that out of above 7 contingencies, 3 were in favour of the applicant company and the same are ignored by the learned Metropolitan Magistrate. I am also told that at the time of oral arguments before the learned Metropolitan Magistrate, nobody was aware about this pronouncement as the said decision, being unreported judgment, at that relevant point of time. It is important to note that the statutory notice, which is required to be served under Section 138 of Negotiable Instrument Act, was served from Ahmedabad and the acknowledgments of the services of notice through postal department were received by the applicant company at Ahmedabad. Merely because the applicant company had taken help of its machinery in issuing cheques from its Bombay account, would not debar its right to prosecute Opponent No.1 company and the other responsible accused persons at Ahmedabad in view of the above settled legal position. When the statute is

clear, the learned Metropolitan Magistrate ought to have considered the entire facts and the submissions put forward by the applicant company and in my view the material error has been committed and the same be rectified. I am in total agreement that the ratio established in the case of SHOW WALLANCE (Supra) by this Court squarely applies to the facts of this case and therefore, the revision application deserves to be allowed.

#. In the result, Revision Application is allowed. The impugned order dated 1-5-1999 at Annexure-B passed by the Metropolitan Magistrate, Court No : 9, Ahmedabad in Criminal Case No : 472/97 is hereby quashed and set aside. It is hereby declared and directed that the said court has territorial jurisdiction to try and entertain the complaint. Hence, complaint is ordered to be restored on the file of the learned Metropolitan Magistrate concerned and the same should be heard and disposed of in accordance with law and on merits.

#. Rule is made absolute. Considering the facts and circumstances of the case, I am not inclined to award any cost. The petition stands disposed of accordingly.

Date : 1-9-1999 [C.K.Buch, J.]

#kailash#